

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA :

v. : Mag. No. 12-3015

GUY HICKS : ORDER

This matter having come before the Court by way of defendant Hicks' pro se motion to dismiss the Complaint based upon double jeopardy;

and the Court having considered the motion, the opposition, the Complaint, and the governing law;

and the Court noting that the defendant claims that double jeopardy bars a federal prosecution based upon his conviction by the state authorities for a violation of state law;

and the dual sovereign doctrine holding that a federal charge that includes conduct that was the subject of a state prosecution is not barred by the double jeopardy clause, United States v. Wheeler, 435 U.S. 313, 316-17 (1978); United States v. Lanza, 260 U.S. 377, 382 (1922); United States v. Piekarsky, --- F.3d ----, 2012 WL 2217035, at *13-14 (3d Cir. June 18, 2012), because each sovereign has a separate interest in prosecuting conduct that violates its laws;

and as the same act may violate state law and violate federal law and a conviction for a violation of state law is not a conviction of the federal offense, prosecution for the federal crime that arises from the same act is not barred by the double jeopardy clause;

and the defendant's conviction for an offense under state law that is based upon one of the events that is alleged to also give rise to the federal criminal charge set forth in the Complaint

therefore not being barred by the double jeopardy clause;

IT IS THEREFORE ON THIS 14th day of August, 2012

ORDERED that the defendant Hicks' motion to dismiss [ECF No.79] is denied.

s/Patty Shwartz

UNITED STATES MAGISTRATE JUDGE